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ALEXANDER L. STEVAS.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

WILLIAM MARK WATKINS, Appellant,

v.

W. P. ROCHE, JR., Appellee.

ON APPEAL FROM
THE SUPREME COURT OF GEORGIA

JURISDICTIONAL STATEMENT

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June 6, 1983

QUESTIONS PRESENTED

- (i) In light of the holding in O'Connor v. Donaldson, 422 US 563, 576 (1975) limiting the power of a State to involuntarily commit a mentally ill person, is the Georgia statute overbroad and deficient in that it authorizes the involuntary committment of "a non-dangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends"?
- (ii) Did the Supreme Court of Georgia err when it refused to adjudicate the merits of Appellant's constitutional attack upon Georgia's involuntary committment statute?

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

Number _____

WILLIAM MARK WATKINS, Appellant,

v.

W. P. ROCHE, JR., Appellee.

ON APPEAL FROM
THE SUPREME COURT OF GEORGIA

JURISDICTIONAL STATEMENT

Dr. William Mark Watkins, the Appellant, appeals from the Final Judgment of the Supreme Court of Georgia, entered March 9, 1983, in which the Supreme Court affirmed, without opinion, the Order of the Superior Court of Laurens County, Georgia, entered September 24, 1982, which granted Appellee's Motion for

Summary Judgment, and held that Appellee was immune from a suit for money damages by virtue of his alleged good faith compliance with State immunity statutes [Ga. Code Ann. §88-404.2 (O.C.G.A. 37-7-41); Ga. Code Ann. §88-502.2 (O.C.G.A. 37-3-41)], regarding Appellant's involuntary committment to a State mental health institution as an allegedly mentally ill person, and declined to entertain Appellant's amended complaint for declaratory relief which had requested the Court to declare the immunity statutes unconstitutional.

OPINIONS BELOW

Pursuant to its Rule 59, the Supreme Court of Georgia affirmed the order of the trial court without opinion. The decision of the Supreme Court of Georgia is reported at ____ Ga. Reports ____, 301 S.E.2d. 287 (1983), and reprinted here at p. 4a, infra.

The order of the trial court is not reported. It is reprinted here at p. 1a, infra.

JURISDICTION

On March 9, 1983, the Supreme Court of Georgia affirmed the judgment of the trial court which had granted Appellee immunity from Appellant's suit for money damages and rejected Appellant's constitutional attack on Georgia's immunity statute. Motion for Rehearing was denied on March 30, 1983. See p. 5a, *infra*.

Notice of Appeal to this Court was duly filed in the Supreme Court of Georgia on June 6, 1983. See page 6 a, *infra*.

Appeal was docketed in this Court within ninety (90) days from the date of the judgment in the court below.

Jurisdiction here is invoked under 28 USC §1257(2).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

United States Constitution, Amendment XIV,
Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of Georgia, 1976, Article I, Section I, Paragraph I, (now Constitution of Georgia of 1982, Article I, Section I, Paragraph I):

Life, liberty, and property. No person shall be deprived of life, liberty, or property except by due process of law.

Ga. Laws 1978, p. 1789 at 1809; Ga. Code Ann. §88-504.2(a) (now Official Code of Georgia Annotated 37-3-41) "Admission to an Emergency Receiving Facility":

Any physician within this State may execute a certificate stating

that he has personally examined a person within the preceeding 48 hours and found that, based upon observations set forth in the certificate, the person appears to be a mentally ill person requiring involuntary treatment. A physicians' certificate shall expire seven days after it is executed. Any peace officer, within 72 hours after receiving such certificate, shall make diligent efforts to take into custody the person named in the certificate and to deliver him forthwith to the nearest available emergency receiving facility serving the county in which the patient is found, where he shall be received for examination.

Ga. Laws 1978, p. 1789 at 1793 ; Ga. Code
Ann. §88-501(v) (now O.C.G.A. 37-3-1(12)):

'Mentally ill person requiring involuntary treatment' means a person who is mentally ill and (A) who presents a substantial risk of imminent harm to himself or others as manifested by either recent overt acts or recent expressed threats of violence which present a probability of physical injury to himself or to other persons, or (B) who is unable to care for his own physical health and safety as to create an imminently life-endangering crisis.

Ga. Laws 1978, p. 1856 at 1877; Ga. Code
Ann. §88-404.2(a) (now O.C.G.A. 37-7-41):

Admission to an emergency receiving facility. Any physician within this State may execute a certificate stating that he has personally examined a person within the preceeding 48 hours and found that, based upon observations set forth in the certificate, the person appears to be an alcoholic, a drug dependent individual, or a drug abuser requiring involuntary treatment. A physician's certificate shall expire seven days after is it executed. Any peace officer, within 72 hours after receiving such certificate, shall make diligent efforts to take into custody the person named in the certificate and to deliver him forthwith to the nearest available emergency receiving facility serving the county in which the patient is found, where he shall be received for examination.

Ga. Laws 1978, p. 1856 at 1862; Ga. Code
Ann. §88-401(y) (now O.C.G.A. 37-7-1(3)):

'Alcoholic, drug dependent individual, or drug abuser requiring involuntary treatment' means a person who is an alcoholic, a drug dependent individual, or a drug abuser and (i) who presents a substantial risk of imminent harm to himself or others as manifested by either recent overt acts or recent expressed threats of violence which present a probability of physical injury to himself or to other persons, or (ii) who is incapacitated by alcohol or drugs on a recurring basis.

Ga. Laws 1978, p. 1856 at 1862; Ga. Code
Ann. §88-401(z) (now O.C.G.A. 37-7-1(13)):

'Incapacitated by alcohol or drugs' means that a person, as a result of the use of alcohol or drugs exhibits life-threatening levels of intoxication, withdrawal, or imminent danger thereof, or acute medical problems; or is under the influence of alcohol or drugs to the extent that he is incapable of caring for himself or protecting himself due to the continued consumption thereof.

Ga. Laws 1978, p. 1789 at 1806; Ga. Code
Ann. §88-502.23 (now O.C.G.A. 37-3-4):

Liability for Violations. Any physician, peace officer, attorney, health official or hospital official, agent or employee, whether employed by private hospital or at facilities operated by the State, a political subdivision of the State, or by a hospital authority created pursuant to the hospital authority's law of Georgia, Chapter 88-18 of the Georgia Code, who acts in good faith in compliance with the admission and discharge provisions of this Chapter shall be immune from civil or criminal liability for his actions in connection with the admission of a patient to a facility or the discharge of a patient from a facility.

Ga. Laws 1978, p. 1856 at 1874; Ga. Code
Ann. §88-402.23 (now O.C.G.A. 37-7-5):

Liability for Violations. Any physician, peace officer, attorney, health official or hospital official, agent or employee, whether employed by private hospital or at facilities operated by the State, a political subdivision of the State, or by a hospital authority created pursuant to the hospital authority's law of Georgia, Chapter 88-18 of the Georgia Code, who acts in good faith in compliance with the admission and discharge provisions of this Chapter shall be immune from civil or criminal liability for his actions in connection with the admission of a patient to a facility or the discharge of a patient from a facility.

Supreme Court of Georgia, Rule 59:

Affirmance without opinion. Affirmance without opinion may be rendered when the court determines one or more of the following circumstances exists and is dispositive of the appeal:

- (1) The evidence supports the judgments;
- (2) No error of law appears and an opinion would have no precedential value;
- (3) The judgment of the court below adequately explains the decision.

RAISING THE FEDERAL QUESTION

At the earliest stage of the proceedings in the trial court following Appellee's invocation of the statutory immunity defense, Appellant amended his complaint to attack the constitutionality of the commitment statutes involved. Specifically, Appellant prayed that Ga. Code Ann. §88-504.2 and §88-404.2 be declared unconstitutional for the reason that they abridged his right of liberty guaranteed by the Fourteenth Amendment and similar provisions of the Constitution of the State of Georgia.

Following this amendment, the trial court consolidated for hearing the question of Appellee's statutory immunity and Appellant's demand for declaratory relief.

On September 24, 1982, the trial court entered an order in which it refused to consider the constitutional challenge and in which it found as a fact that Appellee had

exhibited good faith in complying with the statutory requirements for involuntary commitment.

On appeal before the Supreme Court of Georgia, Appellant reiterated his constitutional claims, and urged the Supreme Court to reverse the trial court and to require it to consider Appellant's constitutional claims; however, the Supreme Court refused to do so and affirmed the trial court without opinion, pursuant to its Rule 59. Thus, the Supreme Court of Georgia considered and rejected Appellant's federal constitutional claim. See, e.g., Lawrence v. State Tax Commission, 286 US 276, 281-283 (1931).

STATEMENT OF THE CASE

The Appellant is a physician licensed to practice medicine in the State of Georgia, who, until March 27, 1979, was actively engaged in the private practice of medicine in Dublin, Georgia. On that date, he was

staying in a motel in Dublin with a long-time friend, one Harry Green. Acting on the request of members of Appellant's family, Appellee, who was also a physician in private practice in Dublin, visited Appellant's room at the motel. He briefly conversed with Appellant through a closed door, and as a result of this "examination", executed a form known as "EMERGENCY ADMISSION - PHYSICIAN'S CERTIFICATE AND REPORT OF PEACE OFFICER". A copy of the certificate in issue is reproduced in the Appendix at p. 8 a. This form is promulgated under the authority of Ga. Code Ann. §88-504.2 and §88-404.2, and is the document by which one physician authorizes the involuntary commitment of a person suspected of being mentally ill or of being a drug abuser. On this certificate, Appellee stated that he had personally examined Appellant and as a result had concluded that Appellant was a drug

abuser requiring involuntary committment. Acting under authority of Appellee's certificate, Appellant was immediately arrested by deputies of the county sheriff's department, and taken in a patrol car to the Georgia Regional Hospital at Augusta.

In his subsequent lawsuit, Appellant contended that Appellee's actions were tortious and amounted to malpractice. Appellee defended on the ground of good faith compliance with Ga. Code Ann. §88-504.2 and §88-404.2.

Appellee moved for summary judgment on the grounds of statutory immunity. The trial court granted the motion and never reached the merits of Appellant's constitutional attack.

The Supreme Court of Georgia, in affirming the trial court also failed to reach the merits of Appellant's constitutional attack on these statutes. Since this decision of the Supreme

Court has the effect of upholding the validity of the State laws involved, this appeal has been taken to this Court.

THE QUESTIONS INVOLVED ARE SUBSTANTIAL

This appeal requires this Court to examine the Georgia statutory scheme for involuntary committment in light of O'Connor v. Donaldson, 422 US 563, 576 (1975). Specifically, this Court held:

A state cannot constitutionally confine, without more, a non-dangerous individual who is capable of surviving safely in freedom by himself, or with the help of willing and responsible family members or friends.

Notwithstanding this clear pronouncement, the Georgia General Assembly in 1978, enacted a statutory scheme which ignores this limitation on State power. In view of the incident from which this litigation arose, it is glaringly apparent that Ga. Code Ann. §88-404.2 and §88-504.2 authorize the involuntary committment of non-dangerous persons

capable of surviving safely in freedom with the help of willing and responsible family members or friends.

Georgia's scheme for involuntary commitment of persons alleged to be abusers of alcohol and/or drugs is found in O.C.G.A. §37-7-41 (Ga. Code Ann. §88-404.2(a)), which must be read together with two definitional sections in the same chapter: O.C.G.A. 37-7-1(3) (Ga. Code Ann. §88-401(y)), and O.C.G.A. 37-7-1(13) (Ga. Code Ann. §88-401(z)). Georgia's scheme for the involuntary commitment for persons alleged to be mentally ill is found at O.C.G.A. 37-3-41 (Ga. Code Ann. §88-504.2(a)), which also must be read together with one definitional section: O.C.G.A. 37-3-1(12) (Ga. Code Ann. §88-501(v)). From the testimony of the Appellee, it is clear that although he executed a "Physician's Certificate" in reference to the Plaintiff under the authority of O.C.G.A. Chapter 37-7

(then Ga. Code Ann. 88-4), the Code Chapter relating to drug abuse, he was attempting to commit and confine the Appellant as an allegedly "mentally ill person". For this reason Appellant focuses his analysis exclusively upon the statutes relating to the commitment of mentally ill persons.

O.C.G.A. 37-3-1(12) deals in its first subdivision with dangerous individuals, and its second subdivision with non-dangerous individuals. The first subdivision, O.C.G.A. 37-3-1(12)(A), is not applicable to the facts of the case. By the testimony of the Appellee himself, and the testimony of Harry Green, appellant's friend staying with him when he was taken into custody, Appellant posed no imminent threat of harm or danger to himself or others.

The facts of this case present a commitment under O.C.G.A. 37-3-41, and 37-3-1(12)(B), the second subdivision of the definitional

section above-quoted.

O.C.G.A. 37-3-1(12)(B) pertains to the involuntary commitment of non-dangerous individuals. When this subdivision "B" is read in light of O'Connor, supra, three possibilities present themselves. First, there are those individuals capable of surviving safely in freedom by themselves. Second, there are those individuals incapable of surviving safely in freedom by themselves, but capable of surviving safely with the help of family or friends. Thirdly, there are those individuals incapable of surviving safely in freedom. The third category includes persons incapable of surviving safely in freedom by themselves and those persons incapable of surviving safely in freedom even with the help of family or friends.

Persons in the first category cannot be committed under the O'Connor standard, supra, or under the terms of O.C.G.A. 37-3-1(12).

Persons in the third category can be involuntarily committed under both the O'Connor standard and Georgia statute.

Persons in the second category, however, cannot be committed under the O'Connor v. Donaldson standard, but can be committed under 37-3-1(12). It is this variance from the O'Connor standard which has prompted this appeal. Appellant, at the time of his arrest at the motel, was in the custody of a close friend and obviously surviving safely in freedom. In short, Appellant was a "category two" individual. Thus O.C.G.A. 37-3-41, which gives O.C.G.A. 37-3-1(12)(B) operative effect, authorized the unconstitutional commitment and detention of the Plaintiff. The Georgia statute is impermissably overbroad in that it allows the State of Georgia to involuntarily commit a non-dangerous individual who is surviving safely in freedom with the help of a willing and responsible friend.

The Georgia statute simply fails to recognize the constitutional limitations placed on State commitment power by this Court in O'Connor, 422 US 563, 576. Appellant continues to be hurt by the refusal of the trial court and the Supreme Court of Georgia to recognize the prevailing constitutional standard in this area, namely O'Connor, and its application to the facts herein.

This would be the first case in which these portions of Georgia statutes, as enacted in 1978, were reviewed for the purposes of constitutional overbreadth analysis, in light of O'Connor v. Donaldson, supra. By simply ignoring Appellant's constitutional attack, the trial court and the Supreme Court of Georgia have denied Appellant the benefit of the holding of O'Connor, and have effectively prevented him from vindicating the denial of the right of liberty, which the Constitution guarantees; and which could not be abridged

by the Georgia Legislature in its 1978 enactment.

Unless this Court assumes probable jurisdiction of this case, Appellant will continue to be denied the opportunity to vindicate the State's abridgment of the rights conferred by O'Connor.

CONCLUSION

For these reasons, the Court should note probable jurisdiction of this appeal.

Respectfully submitted,

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ATTORNEYS FOR APPELLANT,
WILLIAM MARK WATKINS

June 7, 1983

APPENDIX

IN THE SUPERIOR COURT OF LAURENS COUNTY

STATE OF GEORGIA

WILLIAM MARK	:	
WATKINS, M.D.,	:	
	:	
PLAINTIFF	:	CIVIL ACTION NO.
	:	81-278
vs.	:	
	:	
W.P. ROCHE, JR.,	:	DEFENDANT'S MOTION
M.D.,	:	FOR SUMMARY JUDGMENT
	:	
DEFENDANT	:	

ORDER OF COURT

In considering Plaintiff's Amended Complaint of June 3, 1982, the Court has been asked to provide declaratory relief on the issue of the constitutionality of Ga. Code Ann. Sections 88-402.23 and 88-404.2. This the Court declines to do. A declaratory judgment would be inappropriate at this juncture of the case for the reasons that not only have all of Plaintiff's rights fully accrued, thereby relieving him of any danger of proceeding further, but Defendant's acts

are also complete so far as Plaintiff is concerned.

Therefore, it is the Order of this Court that Plaintiff's prayers for declaratory relief are denied.

After further consideration of all the pleadings, answers to interrogatories, depositions, and affidavits, together with briefs submitted by the parties, the Court finds as a matter of fact that Defendant exhibited good faith in complying with the statutory requisites relative to the involuntary committment complained of.

Thus, it is further ordered that Defendant's Motion for Summary Judgment in the above-styled case be granted.

SO ORDERED, this 24th day of September, 1982.

(s) Dubignion Douglas
Judge, Laurens Superior
Court, Dublin Judicial
Circuit

DISTRIBUTION

Original - Clerk
Copy - Kenneth R. Fielder
Copy - Stephen E. Shepard
Copy - Wilson R. Smith

Filed in office this
24th day of Sept., 1982
(s) Carla B. Troup
Deputy Clerk

In the Supreme Court of Georgia

Decided: March 9, 1983

39258. WATKINS V. ROCHE

Judgment affirmed without opinion
pursuant to Rule 59.

All the Justices concur.

Clerk's Office, Supreme Court of Georgia

ATLANTA, MARCH 30, 1983

The motion for a rehearing was denied
today:

Case No. 39258. Watkins v. Roche

Yours very truly,

MRS. JOLINE B. WILLIAMS,
CLERK

IN THE SUPREME COURT OF
THE STATE OF GEORGIA
CASE NUMBER 39258

WILLIAM MARK	§
WATKINS,	§
	§
Appellant,	§
	§
vs.	§
	§
W. P. ROCHE, JR.,	§
	§
Appellee.	§

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that William Mark Watkins, Appellant above-named, hereby appeals to the Supreme Court of the United States from the final Judgment of the Supreme Court of the State of Georgia, affirming the Order of the Superior Court of Laurens County, granting Summary Judgment to Defendant-Appellee, W. P. Roche, Jr., entered in this action on March 9, 1983; and denial of Appellant's Motion for Rehearing having been entered on March 30, 1983.

This appeal is taken pursuant to 28 USC §1257(2).

(s)

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(s)

STEPHEN E. SHEPARD

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ATTORNEYS FOR APPELLANT

Filed June 6, 1983, by
Certified Mail, per
Rule 4, Supreme Court of
Georgia.

By Authority of Section 88-404.2 and 88-404.3,
Georgia Health Code, Georgia Laws 1978, pp.
1856-1894.

State of Georgia, County of Laurens Georgia
Emergency Receiving Facility known as Georgia
Regional Hospital of Augusta.

To the peace officer:

This is to certify that I have personally
examined Wm. Mark Watkins 3/27 1979 at 10¹⁵ AM.,
which was within the preceding 48 hours of the
date of the signing of this certificate. In
my opinion this person appears to be an alco-
holic, a drug dependent individual or a drug
abuser requiring involuntary treatment in that
he appears to be an alcoholic, a drug dependent
individual or a drug abuser AND (a) appears to
present a substantial risk of imminent harm
to himself or others as manifested by either
recent overt acts or recent expressed threats
of violence which present a probability of
physical injury to himself or to other persons

or (b) appears to be incapacitated by alcohol or drugs on a recurring basis. My opinion is based on the following observations:

Flight of ideas, aparent paranoia (will talk to me via "tape"); admission that he is emotionally unstable.

Upon receipt of this certificate, the Peace Officer shall make diligent efforts to take the above-named person into custody as soon as possible, but within 72 hour after receiving this certificate. Thereafter, the Peace Officer shall transport the above-named person to the emergency receiving facility serving the county where such person is found. This certificate expires 7 days after it is executed. This certificate and the Report of Peace Officer are to be delivered by the Peace Officer to the emergency receiving facility and are to be made part of the above-named person's clinical record.

3/27 1979 time 10³⁰ A.m. (s) W. P. ROCHE, JR.M.D.

W. P. Roche, Jr. M.D.
Printed Name of M.D.

912-272-1366
Telephone Number

GEORGIA DEPARTMENT OF
HUMAN RESOURCES

PATIENT IDENTIFICATION

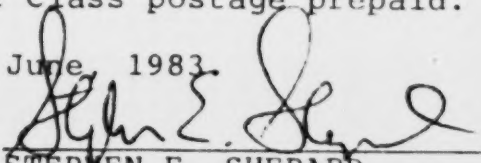
EMERGENCY ADMISSION
PHYSICIAN'S CERTIFICATE
AND REPORT OF PEACE OF-
FICER

CERTIFICATE OF SERVICE

I certify that I have served copies of the within and foregoing Jurisdictional Statement on Wilson R. Smith, Attorney for W. P. Roche, Jr., Appellee, at 205 East Third Street, Vidalia, Georgia, 30474, by depositing the same in the United States Mail, properly addressed, with First Class postage prepaid.

I further certify, pursuant to Rule 28(c), that 28 USC 12403(b) may be applicable, and I have served copies of the within and foregoing Jurisdictional Statement on the Honorable Michael J. Bowers, Attorney General, State of Georgia, Room 132, State Judicial Building, Atlanta, Georgia, 30334, by depositing the same in the United States Mail, properly addressed, with First Class postage prepaid.

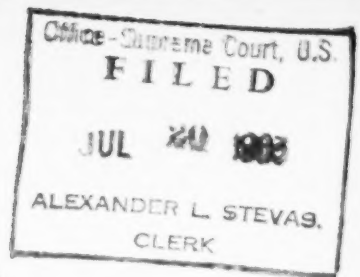
This 7th day of June, 1983


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NUMBER 82-2005

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

WILLIAM MARK WATKINS, Appellant,

v.

W. P. ROCHE, JR., Appellee.

ON APPEAL FROM
THE SUPREME COURT OF GEORGIA

MOTION TO DISMISS

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July 18, 1983

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1982

NUMBER 82-2005

WILLIAM MARK WATKINS, Appellant,

v.

W. P. ROCHE, JR., Appellee.

ON APPEAL FROM
THE SUPREME COURT OF GEORGIA

MOTION TO DISMISS

Appellee moves the Court to dismiss the appeal in
the above case on the following grounds:

I.

The federal question presented by Appellant was
not properly raised in the Georgia state courts in that
Appellant improperly sought to attack the constitutionality
of the statutes in question by means of declaratory

judgment which was inappropriate under Georgia law.

II.

Because Appellant did not raise the constitutional issues by a proper procedure neither the trial court nor the Supreme Court of Georgia considered or passed upon the merits of Appellant's constitutional attack.

III.

Appellant brought suit against Appellee alleging negligence, ie. medical malpractice. The constitutional issues raised by Appellant were neither relevant nor controlling as to the issue of Appellee's liability. Therefore, the appeal does not present a substantial federal question and the state court judgment rests on an adequate non-federal basis.

ARGUMENT AND CITATION OF AUTHORITIES

I.

THE CONSTITUTIONAL ISSUES WERE NOT PROPERLY RAISED AND THE GEORGIA COURTS PROPERLY FAILED TO PASS UPON THE MERITS THEREOF.

Appellant originally filed suit against Appellee seeking to recover damages for alleged medical malpractice. (See Statement of Jurisdiction, p. 12) At that time Appellant did not in any way attack the constitutionality of Ga. Code Ann. §§88-404.2 and 88-504.2 (now O.C.G.A. §§37-7-41 and 37-3-41, respectively). In an amended complaint Appellant sought to obtain a declaratory judgment from the court that these statutes were unconstitutional. It is undisputed that all the rights of both Appellant and Appellee had accrued under the facts and circumstances of this case. Appellant was not and is not being threatened by Appellee or by any other person with possible future involuntary detention pursuant to the statutes in question. It is well established in Georgia law that where the rights of the parties have accrued,

declaratory relief is improper. Pinkard v. Mendel, 216 Ga. 487, 117 S.E. 2d 336 (1960); Brogdon v. State Board of Veterinary Medicine, 244 Ga. 780, 262 S.E. 2d 56 (1979); Sapp v. A.B.C. Credit Investment Company, 243 Ga. 151, 253 S.E. 2d 82 (1979).

In Pinkard v. Mendel, 216 Ga. 487(2) the Supreme Court of Georgia held:

And where, as here, the petition shows that the rights of the parties have already accrued and no facts or circumstances are alleged which show that an adjudication of the plaintiffs' rights is necessary in order to relieve the plaintiff from the risk of taking any future undirected action incident to their rights, which action without direction would jeopardize their interest, the petition fails to state a cause of action for declaratory judgment.

As evidenced by the order of the Georgia trial court, the trial court failed to consider and rule upon the constitutional issues raised in the Appellant's amended petition for a declaratory judgment because such relief

was improper and unavailable under Georgia law. (See Statement of Jurisdiction, Appendix, p. 1a) On Appeal the Supreme Court of Georgia affirmed the trial court's ruling without an opinion, pursuant to its Rule 59. As set out at page 8, Statement of Jurisdiction, Rule 59 authorizes an affirmance without an opinion if: "(1) The evidence supports the judgments; (2) No error of law appears and an opinion would have no precedential value; (3) The judgment of the court below adequately explains the decision." In essence the Supreme Court of Georgia found no error in the trial court's refusal to pass upon Appellant's request for a declaratory judgment with regard to the constitutionality of the statutes attacked and adopted the trial court's ruling in this regard. Appellant having failed to properly raise the constitutional issues so as to require a ruling by the Georgia state courts, this Court should deny jurisdiction of this appeal.

II.

THE CONSTITUTIONAL ISSUES RAISED BY APPELLANT WERE NEITHER RELEVANT NOR CONTROLLING TO THE DECISION BELOW AND DO NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION.

In defending against Appellant's allegations of negligence, Appellee asserted a "good faith" defense provided for by statute, Ga. Code Ann. §§88-402.23 and 88-502.23 (now O.C.G.A. §§37-7-5 and 37-3-4, respectively). Appellant seeks to defeat Appellee's good faith defense by having the Court declare unconstitutional the statutes authorizing the plaintiff's detention and transfer to an emergency receiving facility, Ga. Code Ann. §§88-404.2 and 504.2. This cannot be done.

In amending Chapter 88-4 and 5 of the Georgia Health Code the Georgia legislature (1978 Georgia Laws 1856, at 1893 and 1978 Georgia Laws 1789, at 1825, respectively) specifically provided:

In the event any Section, subsection, sentence, clause or phrase of this Act shall be declared or

adjudged invalid or unconstitutional, such adjudication shall in no manner effect the other sections, subsections, sentences, clauses or phrases of this act, which shall remain a full force and effect, as if the Section, subsection, sentence, clause or phrase so declared or adjudged invalid or unconstitutional were not originally a part hereof. The General Assembly hereby declares that it would have passed the remaining parts of this Act if it had known that such part or parts hereof would be declared or adjudged invalid or unconstitutional.

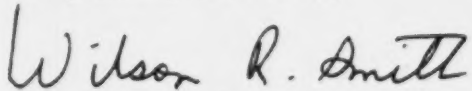
Appellant has not attacked the constitutionality of the good faith defense granted to Appellee in Ga. Code Ann. §§88-402.23 and 88-502.23. Regardless of the merits of Appellant's constitutional argument as to other statutes, Appellee's statutory good faith defense would still be viable. Appellant's constitutional contentions have absolutely no relevancy to the validity of Appellee's good faith defense. It is neither necessary nor relevant to the issues in the present case for the Court to consider the constitu-

tional issues raised by Appellant and the Georgia courts properly refused to do so.

CONCLUSION

For the reasons discussed above, the Court should dismiss the appeal of this case.

Respectfully submitted,

A handwritten signature in cursive script that reads "Wilson R. Smith". The signature is written in dark ink and is positioned above the printed name and address.

Wilson R. Smith
Counsel of Record for
W. P. Roche, Jr., Appellee
205 E. Third Street
Vidalia, GA 30474
(912) 537-7651

AFFIDAVIT OF MAILING

I, the undersigned, do hereby certify that on the 18th day of July, 1983 I personally deposited in the United States Post Office, Vidalia, Georgia, forty copies of the within and foregoing Motion to Dismiss with adequate pre-paid first-class postage and properly addressed to the Clerk, United States Supreme Court, United States Supreme Court Building, Washington, DC 20543.

This 18th day of July, 1983.

Wilson R. Smith

Wilson R. Smith, Counsel of
Record for W. P. Roche, Jr.,
Appellee

Sworn to and subscribed before me

this 18th day of July, 1983.

Lynn Bland

NOTARY PUBLIC

(SEAL)

CERTIFICATE OF SERVICE

I certify that I have served three (3) copies of the within and foregoing Motion to Dismiss on Stephen E. Shepard, Attorney for William Mark Watkins, Appellant, at 418 Greene Street, Augusta, Georgia 30901, by depositing the same in the United States Mail, properly addressed, with first class postage prepaid.

This 18th day of July, 1983.

Wilson R. Smith

Wilson R. Smith, Counsel of
Record for W. P. Roche, Jr.,
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